

APPEAL NO. 030554  
FILED APRIL 17, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 12, 2003. The hearing officer resolved the disputed issues by deciding the following: (1) that the appellant/cross-respondent (claimant) is entitled to supplemental income benefits (SIBs) for the second quarter, May 3 through August 1, 2002; (2) that the claimant is not entitled to SIBs for the third quarter, August 2 through October 31, 2002; (3) that the respondent/cross-appellant (carrier) is not relieved of liability for SIBs for the second or third quarters because of the claimant's failure to timely file an application for SIBs; (4) that the carrier waived its right to contest the claimant's entitlement to SIBs for the second quarter by failing to timely request a benefit review conference (BRC); and (5) that the carrier did not waive its right to contest the claimant's entitlement to SIBs for the third quarter by failing to timely request a BRC.

The claimant appeals the denial of SIBs for the third quarter and the determination that the carrier did not waive its right to contest SIBs for the third quarter. The carrier appeals the determination that the claimant is entitled to SIBs for the second quarter; that the carrier is not relieved of liability for SIBs for the second and third quarter because of the claimant's failure to timely file an application; and that the carrier waived its right to contest the claimant's entitlement to SIBs for the second quarter by failing to timely request a BRC. Both parties filed responses urging affirmance of the challenged determinations.

DECISION

Affirmed.

It was undisputed that the claimant sustained a compensable injury on \_\_\_\_\_. The parties stipulated that the claimant reached maximum medical improvement (MMI) on October 5, 2000, with a 23% impairment rating (IR); that the qualifying period for the second SIBs quarter began on January 19 and ended on April 19, 2002; and that the qualifying period for the third SIBs quarter began on April 20 and ended on July 19, 2002.

**SIBs**

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The claimant argued at the CCH that she had no ability to work during the qualifying periods for the second and third quarters. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee as been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury

causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer specifically found that during the qualifying periods of the second and third quarters, the claimant possessed an ability to work, did not perform any job searches, and that the claimant did not provide a narrative report from a doctor which specifically explained how the injury caused a total inability to work during the qualifying periods of the second and third SIBs quarters. It was undisputed that the claimant did not make any job searches during the qualifying periods for the SIBs quarters at issue.

Rule 130.102(d)(4) requires that the narrative specifically explain how the injury causes a total inability to work, including sedentary and part-time work. A recitation of medical conditions and treatment followed by a simple statement that the claimant could not work is inadequate under Rule 130.102(d)(4). Texas Workers' Compensation Commission Appeal No. 002724, decided January 5, 2001. There is sufficient evidence to support the findings that the claimant had some ability to work, did not perform job searches, and did not provide a sufficient narrative which explained how the injury causes a total inability to work.

The carrier challenged the hearing officer's finding that the claimant's unemployment during the qualifying periods was a direct result of the impairment from the compensable injury. We have noted that a finding that the claimant's unemployment or underemployment is a direct result of the impairment is sufficiently supported by evidence if the injured employee sustained a serious injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996. In this instance, there is evidence from which the hearing officer could determine that the claimant's injury resulted in permanent impairment and that, as a result thereof, the claimant could no longer reasonably work in the same position she had at the time of her injury; consequently, there was sufficient evidence to support the hearing officer's determination that the claimant's unemployment was a direct result of her compensable injury.

### **TIMELY FILING OF SIBS APPLICATIONS**

The parties indicated that the initial determination by the Texas Workers' Compensation Commission (Commission) of the claimant's entitlement to SIBs for the first compensable quarter was delayed by a dispute over the claimant's date of MMI and IR. The carrier argues that Section 408.143 requires the applications be filed after the Commission's initial determination of SIBs. The adjuster testified that the SIBs applications for the second and third quarters were received on October 23, 2002. The Commission's initial determination of entitlement for the first SIBs quarter was dated October 24, 2002, and the adjuster testified that she received the notice of entitlement on October 30, 2002. In evidence were answers to interrogatories in which the carrier stated the applications for second and third quarter SIBs were received on October 30, 2002. However, the hearing officer specifically found that the carrier received the second and third quarter applications on or about October 23, 2002, and that the carrier

disputed the applications on the morning of October 30, 2002. The hearing officer additionally found that the Commission issued a determination of the claimant's entitlement to first quarter SIBs on October 24, 2002. The carrier argues that since the applications were filed with the carrier prior to the Commission's initial determination and were not filed again subsequent to the Commission's initial determination, the applications were therefore not "statements" required by the statute. The carrier relies on Texas Workers' Compensation Commission Appeal No. 941629, decided January 20, 1995, however, we cannot agree that this case, which considered a claimant's failure to disclose earnings during the filing period, provides support for the carrier's position.

The hearing officer determined that the claimant filed her Application for [SIBs] (TWCC-52) for the second and third quarters before the Commission made the initial determination of entitlement. Although the claimant's obligation to file her TWCC-52s did not arise until the Commission made the initial determination, the fact that the applications were filed early did not result in the carrier being relieved of liability for SIBs. Section 408.143(a). See Texas Workers' Compensation Commission Appeal No. 981877, decided September 23, 1998. We find no merit in the carrier's appeal on this basis. The fact that the claimant filed the applications early does not negate the fact that the applications were filed. The hearing officer specifically found that the claimant's applications were not returned by the carrier and the carrier instead processed such applications. We affirm the hearing officer's determination that the carrier is not relieved of liability for SIBs because of the claimant's failure to timely file an application for SIBs for the second and third quarters.

### **CARRIER'S FAILURE TO TIMELY REQUEST A BRC**

Section 408.147 provides that if a carrier fails to request a BRC within 10 days after receipt of the application, the carrier waives the right to contest entitlement to SIBs for that quarter. Rule 130.108 limits the requirement to timely request a BRC to those instances where SIBs were paid in the prior quarter. See also Texas Workers' Compensation Commission Appeal No. 000581, decided May 1, 2000, and Texas Workers' Compensation Commission Appeal No. 991354, decided August 9, 1999. It is undisputed that the carrier paid SIBs for the first quarter. The carrier argues that the hearing officer erred in finding that the carrier waived its right to contest the claimant's entitlement to SIBs for the second quarter because the carrier failed to timely request a BRC. The carrier admits that it did not request a BRC, but argues that waiver does not apply in this situation because the language contained in Rule 130.108 ("has paid") requires past action and that at the time the carrier disputed the second and third quarters, payment for the first quarter had not been made. The carrier argues that it accepted the first quarter on the same day it disputed the second quarter but the second quarter was disputed in the morning, and the first quarter was accepted in the afternoon, and that actual payment was made on the first quarter after business hours and would therefore not be deemed to have been made until the next day. Under these facts, we cannot agree that the hearing officer erred in deciding that the carrier waived its right to contest the claimant's right to entitlement to SIBs for the second quarter. The

carrier determined it would pay first quarter SIBs on the same day the dispute was made regarding second quarter SIBs even though the actual processing of the payment may have occurred after 5:00 P.M. The carrier relies on Texas Workers' Compensation Commission Appeal Panel No. 021078, decided June 13, 2002, to support its position. It was noted in Appeal Panel No. 021078 that the carrier argued that at the time it received the application (for the eighth quarter) not only had it not paid SIBs for the previous quarter (the seventh) but was actively disputing entitlement. In the instant case there is no evidence that the carrier ever disputed first quarter SIBs. In fact, the adjuster testified that she processed payment on the same day she received the initial determination from the Commission of entitlement. There is sufficient evidence to support the determination of the hearing officer that the carrier waived the right to contest the claimant's entitlement to SIBs for the second quarter.

It is undisputed that payment was not made for second quarter SIBs. Because the carrier did not pay second quarter SIBs, Rule 130.108(d) does not apply and there was no waiver for the third quarter.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ST. PAUL GUARDIAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Roy L. Warren  
Appeals Judge